

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

)	
In the Matter of)	
)	Investigation No. 337-TA-344
CERTAIN CUTTING TOOLS FOR)		
FLEXIBLE PLASTIC CONDUIT)		
AND COMPONENTS THEREOF)		
)	

ORDER

The Commission instituted this section 337 investigation on December 2, 1992, in response to a complaint filed October 30, 1992, by Dawn Industries, Inc., Dextel Inc., and Duane Robertson (herein collectively "Dawn Industries"). 57 Fed. Reg. 57075-76 (December 2, 1992). Supplements to the complaint were filed on November 13 and November 17, 1992. Dawn Industries, complaint alleged that two respondents: (1) Pro Mark, Inc. ("Pro Mark"), and (2) Orbit Underground, d/b/a Orbit Sprinklers, had violated section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) by reason of the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cutting tools for flexible plastic conduit or components thereof. The cutting tools were alleged to infringe claims 1-7 of U.S. Letters Patent 4,336,652 (the '652 patent) and the single claim of U.S. Letters Patent Des. 266,736 (the '736 patent). The Commission terminated Orbit Underground as a respondent by Fed. Reg. 12253. The Commission terminated Orbit Underground as a respondent by notice published on March 3, 1993, at 58 Fed. Reg. 12253, added an additional respondent, Chewink Corporation ("Chewink"), by notice published on March 25, 1993, at 58 Fed. Reg. 16203, and deleted the claim of infringement of the '736 patent by notice published on April 26, 1993, at 58 Fed. Reg. 21994. The Commission found, pursuant to Commission interim rule 210.25,

that respondent Chewink had waived its right to appear, to be served with documents, and to contest the allegations at issue in this investigation by notice published on August 25, 1993, at 58 Fed. Reg. 44850-51.

On September 2, 1993, the presiding administrative law judge (ALJ) issued his final ID finding that there was a violation of section 337. The ALJ found that claim 1 of the '652 patent was infringed. but that claims 2 and 7 of that patent were not infringed. The ALJ also found that a domestic industry existed with respect to the patent claims in issue. On October 20, 1993, the Commission determined not to review the ID, which thereby became the determination of the Commission. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding. 58 Fed. Reg. 57837 (October 27, 1993).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing cutting tools for flexible plastic conduit manufactured and/or imported by or on behalf of Chewink Corporation of Taipei, Taiwan or Pro Mark, Inc. of Bountiful, Utah. In addition, the Commission has issued a cease and desist order directed to the domestic respondent, Pro Mark, Inc., ordering it to cease and desist the following activities in the United States: selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring (except for exportation) imported cutting tools for flexible plastic conduit covered by claim 1 of U.S. Letters Patent 4,336,652. The orders apply to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, of the above-named companies.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d), (f), (g) do not preclude the issuance of the limited exclusion and cease and desist orders, and that bond during the Presidential review period shall be in the amount of 120 percent of the entered value of the infringing cutting tools.

1. Cutting tools for flexible plastic conduit covered by claim 1 of U.S. Letters Patent 4,336,652, and manufactured/and/or imported by or on behalf of Chewink Corporation or Pro Mark, Inc. or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, are excluded from entry into the United States for the remaining term of the patent, i.e., until June 29, 1999, except under license of the patent owner or as provided by law.
2. The product identified in paragraph 1 of this Order is entitled to entry into the United States under bond in the amount of 120 percent of the entered value of such article, from the day after this Order is received by the President, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, until such time as the President notifies the Commission that he approves or disapproves this action, but no later than 60 days after the date of receipt of this Order by the President.
3. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to cutting tools for flexible plastic conduit imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
4. The Commission may amend this Order in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 211.57).
5. The Secretary shall serve copies of the Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.
6. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued: December 3, 1993